

BILL LOCKYER, Attorney General  
of the State of California  
RICHARD D. MARINO, State Bar No. 90471  
Deputy Attorney General  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-8644  
Facsimile: (213) 897-9395  
E-mail: Richard.Marino@doj.ca.gov

Attorneys for Complainant

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

SAMUEL E. MIESKE  
500 Ximeno Avenue, #224  
Long Beach, California 90814

Physical Therapist's License No. 30451

Respondent.

Case No. 1D 2005 64225

OAH No. L2006040296

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

**IT IS HEREBY STIPULATED AND AGREED** by and between the parties to  
the above-entitled proceedings that the following matters are true:

**PARTIES**

1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical  
Therapy Board of California. He brought this action solely in his official capacity and is  
represented in this matter by Bill Lockyer, Attorney General of the State of California, by  
Richard D. Marino, Deputy Attorney General.

2. Respondent Samuel E. Mieske (Respondent) is represented in this  
proceeding by attorney Ernest S. Mieske, whose address is Marshall, Burghardt, Mieske & Harp,  
LLP, 901 Bruce Road, Suite 270, Chino, California 95928..

3. On or about March 12, 2005, Respondent filed an application dated March

1 9, 2005, with the Physical Therapy Board of California (Board) to obtain a Physical Therapist  
2 license. On November 11, 2005, the Board issued Initial Probationary Physical Therapist  
3 License No. 30451 to Respondent.

#### 4 **JURISDICTION**

5 4. Statement of Issues No. 1D 2005 64225 was filed before the Board on  
6 March 28, 2006, and is currently pending against Respondent. The Statement of Issues and all  
7 other statutorily required documents were properly served on Respondent on March 28, 2006.  
8 Respondent timely filed his Notice of Defense contesting the Statement of Issues. A copy of  
9 Statement of Issues No. 1D 2005 64225 is attached as Exhibit A and incorporated herein by  
10 reference.

#### 11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, fully discussed with counsel, and  
13 understands the charges and allegations in Statement of Issues No. 1D 2005 64225. Respondent  
14 has also carefully read, fully discussed with counsel, and understands the effects of this  
15 Stipulated Settlement and Disciplinary Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the  
17 right to a hearing on the charges and allegations in the Statement of Issues; the right to be  
18 represented by counsel at his own expense; the right to confront and cross-examine the witnesses  
19 against him; the right to present evidence and to testify on his own behalf; the right to the  
20 issuance of subpoenas to compel the attendance of witnesses and the production of documents;  
21 the right to reconsideration and court review of an adverse decision; and all other rights accorded  
22 by the California Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
24 each and every right set forth above.

#### 25 **CULPABILITY**

26 8. Respondent admits the allegations set forth in paragraphs 17 and 18 of  
27 Statement of Issues No. 1D 2005 64225.

28 9. Respondent agrees that his Physical Therapist is subject to denial and he

1 agrees to be bound by the Board 's imposition of discipline as set forth in the Disciplinary Order  
2 below.

### 3 CONTINGENCY

4 10. This stipulation shall be subject to approval by the Physical Therapy Board  
5 of California. Respondent understands and agrees that counsel for Complainant and the staff of  
6 the Physical Therapy Board of California may communicate directly with the Board regarding  
7 this stipulation and settlement, without notice to or participation by Respondent or his counsel.  
8 By signing the stipulation, Respondent understands and agrees that he may not withdraw his  
9 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon  
10 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement  
11 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be  
12 inadmissible in any legal action between the parties, and the Board shall not be disqualified from  
13 further action by having considered this matter.

14 11. The parties understand and agree that facsimile copies of this Stipulated  
15 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
16 force and effect as the originals.

17 12. In consideration of the foregoing admissions and stipulations, the parties  
18 agree that the Board may, without further notice or formal proceeding, issue and enter the  
19 following Disciplinary Order:

### 20 DISCIPLINARY ORDER

21 **IT IS HEREBY ORDERED** that Respondent Samuel E. Mieske that Physical  
22 Therapist License No. 30451 will remain issued and automatically revoked. However, the  
23 revocation will remained stayed and the Respondent placed on three (3) years probation from the  
24 date of the issuance of the initial probationary license—namely November 1, 2005, on the  
25 following terms and conditions.

26 1. OBEY ALL LAWS Respondent shall obey all federal, state and local  
27 laws, and statutes and regulations governing the practice, inspections and reporting, of physical  
28 therapy in California and remain in full compliance with any court ordered criminal probation.

2. QUARTERLY REPORTS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

3. RESTRICTION OF PRACTICE–PROHIBITION OF SELF EMPLOYMENT OR OWNERSHIP. Respondent shall not be the sole proprietor or partner in the ownership of any business that offers physical therapy services. Respondent shall not be a Board member or an officer or have a majority interest in any corporation that offers or provides physical therapy services. Respondent may not employ physical therapists, physical therapist assistants or physical therapy aides.

4. RESTRICTION OF PRACTICE - HOME CARE The respondent shall not provide physical therapy services in a patient's home.

5. RESTRICTION OF PRACTICE - SOLO PRACTICE The respondent shall be prohibited from engaging in the solo practice of physical therapy.

6. RESTRICTION OF PRACTICE - NO EMPLOYMENT OR SUPERVISION OF PHYSICAL THERAPY STUDENT INTERNS Respondent shall not supervise any physical therapist student interns during the entire period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this Decision.

7. COMPLIANCE WITH ORDERS OF A COURT The respondent shall be in compliance with any valid order of a court. Being found in contempt of any court order is a violation of probation.

8. COMPLIANCE WITH CRIMINAL PROBATION AND PAYMENT OF RESTITUTION Respondent shall not violate any terms and conditions of criminal probation and shall be in compliance with any restitution ordered, payments or other orders.

9. PROBATION MONITORING PROGRAM COMPLIANCE Respondent shall comply with the Board's probation monitoring program.

10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in person for interviews with the Board, or its designee, upon request at various

1 intervals.

2                   11.     NOTIFICATION OF PROBATIONER STATUS TO EMPLOYERS The  
3 respondent shall notify all present or future employers of the reason for and the terms and  
4 conditions of the probation by providing a copy of the Initial Probationary License, Statement of  
5 Issues, Accusation and the Decision and Order, or Stipulated Settlement to the employer, and  
6 submit written employer confirmation of receipt to the Board within 10 days. The notification(s)  
7 shall include the name, address and phone number of the employer, and, if different, the name,  
8 address and phone number of the work location.

9                   12.     NOTIFICATION OF CHANGE OF NAME OR ADDRESS The  
10 respondent shall notify the Board, in writing, of any and all name and/or address changes within  
11 ten (10) days.

12                   13.     PROHIBITED USE OF ALIASES Respondent may not use aliases and  
13 shall be prohibited from using any name which is not him legally-recognized name or based upon  
14 a legal change of name.

15                   14.     WORK OF LESS THAN 20 HOURS PER WEEK If the respondent  
16 works less than 192 hours as a physical therapist or a physical therapist assistant in the physical  
17 therapy profession in a period of three months, those months shall not be counted toward  
18 satisfaction of the probationary period. The respondent shall notify the Board if he works less  
19 than 192 hours in a three month period.

20                   15.     TOLLING OF PROBATION The period of probation shall run only  
21 during the time respondent is practicing or performing physical therapy within California. If,  
22 during probation, respondent does not practice or perform within California, respondent is  
23 required to immediately notify the probation monitor in writing of the date that respondent is  
24 practicing or performing physical therapy out of state, and the date of return, if any. Practicing or  
25 performing physical therapy by the respondent in California prior to notification to the Board of  
26 the respondent's return will not be credited toward completion of probation. Any order for  
27 payment of cost recovery shall remain in effect whether or not probation is tolled.

28                   16.     VIOLATION OF PROBATION If respondent violates probation in any

1 respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke  
2 probation and carry out the disciplinary order that was stayed. If an accusation or petition to  
3 revoke probation is filed against respondent during probation, the Board shall have continuing  
4 jurisdiction until the matter is final, and the period of probation shall be extended until the matter  
5 is final.

6                   17.     CESSATION OF PRACTICE DUE TO RETIREMENT, HEALTH OR  
7 OTHER REASONS Following the effective date of this probation, if respondent ceases  
8 practicing or performing physical therapy due to retirement, health or other reasons or is  
9 otherwise unable to satisfy the terms and conditions of probation, respondent may request to  
10 surrender his license to the Board. The Board reserves the right to evaluate the respondent's  
11 request and to exercise its discretion whether to grant the request or to take any other action  
12 deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the  
13 tendered license, the terms and conditions of probation shall be tolled until such time as the  
14 license is no longer renewable, the respondent makes application for the renewal of the tendered  
15 license or makes application for a new license.

16                   18.     COMPLETION OF PROBATION Upon successful completion of  
17 probation, respondent's license shall be fully restored.

18                   19.     PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHILE  
19 ON PROBATION It is not contrary to the public interest for the respondent to practice and/or  
20 perform physical therapy under the probationary conditions specified in the disciplinary order.  
21 Accordingly, it is not the intent of the Board that this order, the fact that the respondent has been  
22 disciplined, or that the respondent is on probation, shall be used as the sole basis for any third  
23 party payer to remove respondent from any list of approved providers.

24                   20.     PROHIBITION OF THE USE OF ALCOHOL Respondent shall abstain  
25 completely from the use of alcoholic beverages.

26                   Failure to comply with any component of this condition as specified above is a  
27 violation of probation.

28                   21.     BIOLOGICAL FLUID TESTING Respondent shall immediately submit

1 to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.  
2 Failure to comply with any component of this condition as specified above is a  
3 violation of probation.  
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ernest s. Mieske. I understand the stipulation and the effect it will have on my Physical Therapist. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physical Therapy Board of California.

DATED: May 9, 2006.

Original Signed By: \_\_\_\_\_  
SAMUEL E. MIESKE (Respondent)  
Respondent

I have read and fully discussed with Respondent Samuel Mieske the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: May 9, 2006.

Original Signed By: \_\_\_\_\_  
ERNEST S. MIESKE  
Attorney for Respondent



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**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physical Therapy Board of California of the Department of Consumer Affairs.

DATED: May 9, 2006.

BILL LOCKYER, Attorney General  
of the State of California

Original Signed By: \_\_\_\_\_  
RICHARD D. MARINO  
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2006500430  
Mieske Stipulated Decision.wpd

**Exhibit A**

**Statement of Issues No. 1D 2005 64225**

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

SAMUEL MIESKE  
500 Ximeno Avenue, #224  
Long Beach, California 90814

Respondent.

Case No. 1D 2005 64225

OAH No. L2006040296

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 10, 2006.

It is so ORDERED June 9, 2006.

Original Signed By:  
FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
Donald A. Chu, PhD, PT, President